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January 15, 2002

VIA E-MAIL AND FIRST-CLASS MAIL

PUBLIC DOCUMENT

Ms. Gloria Blue
Executive Secretary, Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th Street N.W.
Washington D.C. 20508

Re: Steel Industry Section 201 Investigation (ITC Inv. No. TA-201-73);
Large Diameter Line Pipe (LDLP) from Canada

Dear Ms. Blue:

On behalf of IPSCO Sales Inc. and its affiliates ("IPSCO"), this response supports the January 3, 2001 request from Tuscarora Gas Transmission Co. "for the exclusion of Canada from any safeguard remedies that might apply to imports from other countries of welded non-OCTG tubular products, and requesting in particular the exclusion of Large Diameter Line Pipe ("LDLP") from Canada." In particular:

- IPSCO supports in full the Tuscarora request for the reasons provided by Tuscarora;
- IPSCO opposes any restrictions on imports of Category 20 tubular products (welded non-OCTG) from Canada;
- The ITC has noted that only 20-to-30 percent of Category 20 consists of large diameter line pipe. The ITC has also noted that LDLP is a specialty product, unlike the commodity pipe products that make up the bulk of Category 20. In addition, the ITC noted that a strong U.S. energy sector has enabled the LDLP segment of the steel tubular market to *avoid* the threat of injury affecting other market segments.
- The U.S. energy industry uses LDLP to construct oil and gas pipelines that transport energy from the wellhead to distribution hubs and industrial customers, such as power plants. LDLP must meet demanding specifications for safety and environmental reasons. IPSCO has reliably supplied Canadian LDLP of high quality to U.S. pipeline customers for many years.

- Although the six ITC Commissioners were evenly divided over whether to include Canada in a Category 20 remedy, the ITC *agreed* that, within Category 20, LDLP from Canada neither injured nor threatens to injure the U.S. industry.
- IPSCO believes that NAFTA and other legal and policy considerations strongly favor the exclusion of Canada from a Category 20 remedy. Companies like IPSCO that have invested heavily on both sides of the border in reliance on NAFTA - and their U.S. customers - should not be penalized in the absence of an ITC majority finding or other compelling evidence of harm.
- At a minimum, no U.S. industry interest would be served by restricting LDLP imports from Canada. Rather, by including LDLP in a tariff-rate quota or other remedy applicable to Canada, the President would shift the costs of relief onto the backs of Tuscarora and other U.S. pipeline operators, without any benefit to those segments of the U.S. steel industry that actually need relief.
- Without an exclusion or separately-earmarked quota for LDLP, a tariff-rate quota on all Category 20 imports from Canada would favor imports of standard pipe and other commodity products that would enter in large quantities from the opening of the quota period, leaving little or no quota and thus imposing high tariffs upon LDLP imported from Canada later in the quota period.
- Thus, a failure to carve LDLP out from either a tariff or tariff-rate quota on Category 20 imports from Canada would not only harm the U.S. energy industry but almost inevitably violate NAFTA Article 802(5). Any restriction on imports of LDLP from Canada, whether or not in violation of NAFTA, would also trigger a compensation obligation under NAFTA Article 802(6).

We provided additional legal analysis in support of these points in our January 4, 2001 submission to the TPSC, which, for ease of reference, we have attached to these reply comments.

Respectfully submitted,



George Kleinfeld
Counsel to IPSCO Sales Inc.

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January 4, 2002

VIA E-MAIL AND FIRST-CLASS MAIL

PUBLIC DOCUMENT

Ms. Gloria Blue
Executive Secretary, Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th Street N.W.
Washington D.C. 20508

Re: Steel Industry Section 201 Investigation (ITC Inv. No. TA-201-73);
Large Diameter Line Pipe (LDLP) from Canada

Dear Ms. Blue:

On behalf of IPSCO Sales Inc. and its affiliates ("IPSCO"), we request that President Bush either (a) exclude Canada from any quotas or tariffs that he may impose against imports from other countries of welded non-OCTG tubular products generally, or (b) otherwise act to provide U.S. oil and gas producers with continued access to unrestricted imports of Large Diameter Line Pipe ("LDLP") from Canada.

1. IPSCO's Products Are a Mainstay of the North American Energy Industry

IPSCO is a producer of flat-rolled and tubular steel products, with its operational headquarters located near Chicago and production and processing facilities in several U.S. states and Canada (NYSE ticker symbol = IPS). IPSCO produces LDLP in Saskatchewan for sale primarily in western Canada and the north central and midwestern United States. IPSCO produces other tubular products (e.g., OCTG, standard pipe) in Iowa and Nebraska, some of which it exports to Canada. IPSCO thereby provides a textbook example of NAFTA-inspired economic integration across the northern border for the benefit of North American steel

producers and their customers in both the United States and Canada. In this regard, neither the United Steel Workers union nor the majority of U.S. pipe and tube producers have advocated restrictions on imports from Canada of LDLP or other welded non-OCTG tubular products, and IPSCO is strongly of the view that these products should be excluded from any remedy pursuant to NAFTA.

2. No Majority ITC Finding of Injury or Recommended Relief

In its October 22, 2001 injury determinations, the ITC did *not* find by majority vote that imports of welded non-OCTG tubular products from Canada had contributed importantly to serious injury. The Commission's ambivalence on this issue reflects the above-noted mixed signals coming from within the U.S. steel industry. As for LDLP, the ITC did *not* separately classify this product but rather included it with standard pipe and other lesser-value, commodity grade tubular products under "Category 20." In the one current trade investigation that has focused exclusively on LDLP - an antidumping case - the U.S. industry excluded Canada from its petition against Japan and Mexico; moreover, the petitioner's counsel testified that U.S. pipe producers needed no relief from imports of Canadian LDLP.¹

During the remedy phase of the Section 201 investigation, three of the six Commissioners recommended the exclusion of Canada from any Category 20 remedy. Of the other three Commissioners, two (Koplan, Miller) recommended a tariff-rate quota tied to Canadian and

¹ *Certain Welded Large Diameter Line Pipe from Japan and Mexico*, Public Conference (preliminary), January 31, 2000, Tr. at 52-53 (testimony of Roger Schagrin, Petitioners' counsel).

other import levels of Category 20 pipe for the year 2000, and only one Commissioner (Bragg) recommended an across-the-board tariff increase on Canadian imports.

Based on the testimony of U.S. producers at the November 8 remedy hearing and the ITC's December 19, 2001 Report, we believe that the three Commissioners who recommended the inclusion of Canada in the Category 20 remedy did so because of concern over standard pipe imports, not because they considered LDLP from Canada a cause of injury.³ At page 166 of its Views on Injury, the Commission notes that "there has been a recent increase in demand for large diameter line pipe and that projections are for continued growth due to rising demand for pipeline projects." The Commission distinguished the healthy condition of America's LDLP market from the vulnerability of the "overall welded product category," of which LDLP accounts for only "20 to 30 percent" of the total. *Id.* In response to the Commission's mixed views on the inclusion of Canada in an overall Category 20 remedy, and the Commission's apparent consensus that LDLP imports from Canada in particular have *not* contributed importantly to serious injury, the President should impose no restrictions of any kind on Canadian LDLP.

3. Any Remedy Directed at Canadian Standard Pipe Should Exempt LDLP

Unlike standard pipe, LDLP plays a critical role in the energy infrastructure of the United States. Although the ITC did not make a separate injury finding for LDLP, it did note that 'welded pipe encompasses a range of products, including both commodity and specialty products' *Id.* at 383. The special uses and customers for LDLP, as well as its distinct physical

² Two other Commissioners (Okun, Hillman) recommended a tariff-rate quota that excluded all Canadian imports, while Commissioner Devaney recommended a tariff increase but with the exclusion of Canada.

³ See Tr. at 502 (testimony of Leavitt Tube). See also Dec. 19 ITC Report at 166.

characteristics, strongly favor the separate treatment of this product in the event President Bush includes Canada in a Category 20 remedy. Standard pipe and other commodity-grade non-OCTG tubulars have more general uses, are more widely produced, and are more fungible one with another, as compared to LDLP.⁴

The tariff-rate quota favored by 2 of the 3 Commissioners who recommended Canada's inclusion in Category 20 relief would permit unrestricted imports of all non-OCTG tubulars up to year 2000 levels, and thereafter apply a 20% tariff. Without the exclusion or separate treatment of Canadian LDLP, imports of standard pipe might seize most of the available quota. LDLP business is transacted on a project basis, with fluctuating volumes depending on pipeline construction activity. Pipeline orders can come in a flurry and then be dormant for a number of years. If the first LDLP imports from Canada for a major new U.S. pipeline came late in the quota period, the entirety of those imports could incur a 20% tariff. But the U.S. industry witnesses who favored Canada's inclusion in Category 20 relief at the November 8, 2001 ITC remedy hearing did so because of concerns over imports of standard pipe, *not* LDLP.⁵ Neither U.S. standard pipe producers nor any other U.S. economic interest would be served by imposing the costs of Category 20 relief primarily on U.S. pipeline projects and their sponsors.

4. NAFTA Considerations also Require the Exemption of Canadian LDLP

If President Bush implements quotas or tariffs applicable to LDLP from Canada, then NAFTA Article 802(5) would require special treatment of such imports. This Article prohibits "restrictions on a good" from Canada under Section 201 "that would have the effect of reducing

⁴ See ITC Remedy Hearing Tr. at 617-619, test. of Williams Company.

⁵ Tr. at 502 (testimony of Leavitt Tube).

imports of such good from a Party below the trend of imports of the good from that Party over a recent representative base period with allowance for reasonable growth.”

As noted above, LDLP comprises a separate and distinct product (with its own tariff classification) in comparison to other Category 20 pipe, as demonstrated by its treatment as a unique “like product” in the current U.S. antidumping investigation of LDLP from Japan and Mexico. Under NAFTA Article 802(5), any tariff-rate quota applicable to LDLP would have to permit reasonable growth in imports *of LDLP* from Canada above the trend of such imports for a recent representative base period. Since the end of 1999, the trend in LDLP imports from Canada is upwards, reflecting increased U.S. oil and gas pipeline construction activity.

Any tariff, quota, or tariff-rate quota that applied equally to all Category 20 products would almost certainly preclude rather than permit a reasonable growth in LDLP imports from Canada. As discussed above, without an exclusion or separately-earmarked quota for LDLP, a tariff-rate quota on all Category 20 imports would favor imports of standard pipe and other commodity products that would enter in large quantities from the opening of the quota period, leaving little or no quota and thus imposing high tariffs upon LDLP imported from Canada later in the quota period.⁶ Thus, a failure to carve LDLP out from either a tariff or tariff-rate quota on Category 20 imports from Canada would not only harm the U.S. energy industry but almost inevitably violate NAFTA Article 802(5).

Any restriction on imports of LDLP from Canada, whether or not in violation of NAFTA, would also trigger a compensation obligation under NAFTA Article 802(6) “in the form of

⁶ The ITC has itself acknowledged that “establishment of a single quota for welded pipe could result in the quota being filled entirely by imports of commodity products.” Dec. 19 Report at 383.

concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the action.” Failure to provide adequate compensation would entitle Canada to withdraw tariff benefits from U.S. exports to Canada. This open invitation to tit-for-tat retaliation provides yet another compelling reason for the President to refrain from imposing any restrictions on imports of LDLP from Canada.

5. The U.S. Energy Industry Needs Access to Canadian LDLP

The U.S. energy industry benefits significantly from unimpeded access to LDLP from Canada, enabling the development, completion, and maintenance of oil and gas pipelines with greater speed, efficiency and reliability and thereby promoting important U.S. national interests. In confirmation of this fact, Tuscarora Gas Transmission Co., a prominent U.S. pipeline operator, submitted a letter to the TPSC yesterday opposing any import restrictions on LDLP from Canada. A significant percentage of U.S. domestic oil and gas output flows through pipelines made with Canadian LDLP. Future U.S. energy projects of national importance might be deferred or jeopardized by the inability of U.S. oil and gas companies to acquire LDLP across the northern border in a timely and cost-effective manner.

For all of the above reasons, President Bush should impose no restrictions on imports of LDLP from Canada.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "G. Kleinfeld", is written over a horizontal line.

George Kleinfeld
Counsel to IPSCO Sales Inc.